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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,117	10/31/2003	William J. Bertrand	M190.247.101 / P0011522.0	8914
Dicke, Billig &	7590 09/07/201 Czaia, PLLC	EXAMINER		
ATTN: MD Ma	itters	DORNA, CARRIE R		
Fifth Street Towers, Suite 2250 100 South Fifth Street			ART UNIT	PAPER NUMBER
Minneapolis, M	IN 55415		3735	,
			MAIL DATE	DELIVERY MODE
			09/07/2010	PAPER

## Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Advisory Action Before the Filing of an Appeal Brief

Application No.		Applicant(s)	
	10/698,117	BERTRAND ET AL.	
	Examiner	Art Unit	
	Carrie Dorna	3735	

The MAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 23 August 2019 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this spillocition, application, application, application and the control of the prior of the		Carrie Dorna	3735					
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must interly file one of the following reples: (1) an amountment, affidative, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.131: or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ☑ The period for reply expires ② months from the mailing date of the final rejection.  b) ☐ The period for reply expires on: (1) the mailing date of the final rejection.  Examiner Note: if box it is checked, check either box (a) or (b) ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS for the mailing date of the final rejection.  Examiner Note: if box it is checked, check either box (a) or (b) ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS of THE FIRAL REJECTION. See WHEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee hands be proposed to determine the period of extension and the corresponding amount of the file. The appropriate extension fee hours of CFR 1.17(a) is calculated from: (1) the copyration date of the shortened statutory period for reply organials yen propriate extension fee hours of CFR 1.17(a) is calculated from: (1) the copyration date of the shortened statutory period for reply organials yen may reduce any seminar part and the maintenance and the corresponding amount of the file. The propriate extension fee hours are consideration and file and the file replection, even if filendly filed.  OTHEC 6F APPEAL.  In the Notice of Appeal was filed on A brief in compliance with 37 CFR 4.1.37 must be filed within two months of the date of filing the Notice of Appeal was been filed, any reply must be filed within the	The MAILING DATE of this communication appe	ars on the cover sheet with the c	orrespondence add	ress				
application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: If Dox 1 is checked, check either box (a) or (b). ONLY CHECK BX (b) WH-TH THE FIRST REPLAY STILED WITHIN TWO MONTHS OF THE FIRST ALTER STILED TOS 07(f).  Extensions of time may be obtained under 37 CFR 1.138(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee have been fitted is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been fitted is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been fitted is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been fitted is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee and 37 CFR 1.174(a) is calculated from (1) the expiration date of the stortered statutory period for epily originally set in the Office and 17 CFR 1.137 (a) contained of the final rejection, even if timely filled, the feet in the fill of the fill	THE REPLY FILED <u>23 August 2010</u> FAILS TO PLACE THIS AF	PPLICATION IN CONDITION FOR	ALLOWANCE.					
a) The period for reply expires 2 months from the mailing date of the final rejection. b) The period for reply expires 0.11 (the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the infall rejection. Examine Note: If bot is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MFEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.13(e). The date on which the petition under 37 CFR 1.13(e) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any examend patent them adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL 2.2 The Notice of Appeal was filed on	application, applicant must timely file one of the following rapplication in condition for allowance; (2) a Notice of Appe for Continued Examination (RCE) in compliance with 37 C	replies: (1) an amendment, affidavit al (with appeal fee) in compliance	, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request				
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Supervisory Patent Examiner, Art Unit 3735 Examiner, Art Unit 3735		/Carrie Dorna/						
	Supervisory Patent Examiner, Art Unit 3735	Examiner, Art Unit 3735						

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 23 August 2010 have been fully considered but they are not persuasive. Applicant contends that Weijand cannot detect background magnetic field data because the array 3 antennae are tuned to the specified signal frequencies emitted by implant coil 22. The Examiner does not find this argument to be persuasive because the array coils of Weijand are able to detect background magnetic field data if present at the frequencies to which the array coils are tuned. Applicant contends that neither Bertrand or Weijand teach that sensed magnetic field data is communicated to a processor. The Examiner does not find this argument to be persuasive as Weijand clearly teaches that the data received by the processor from the array coils is a measure of the strength of an electromagnetic field sensed by each array. In response to Applicant's argument that Weijand is "unrelated to determining a valve setting", it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Bertrand and Weijand are directed to magnetically determining the position and orientation of an implanted fluid control medical device. Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For these reasons, the previous rejections have been maintained.